

A G R E E M E N T

THIS AGREEMENT is entered into this ____ day of _____, 20____, by and between the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City" and the Board of Regents, University of Nebraska, University of Nebraska-Lincoln, hereinafter collectively referred to as "UNL."

RECITALS

A.

The City proposes to engage UNL in accordance with the terms and conditions set forth herein to monitor dry weather flows from storm drains and provide a field screening analysis for illicit connections and illegal discharges ("Dry Weather Storm Water Monitoring").

B.

UNL possesses certain skills, experience, education and competency to perform the Dry Weather Storm Water Monitoring on behalf of the City, and the City desires to engage UNL to conduct such Dry Weather Storm Water Monitoring on the terms herein provided.

C.

UNL hereby represents that UNL is willing and able to perform the Dry Weather Storm Water Monitoring in accordance with the Dry Weather Storm Water Monitoring proposal submitted with this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the above Recitals and the mutual obligations of the parties hereto, the parties do agree as follows:

I.

EMPLOYMENT OF UNL

The City hereby agrees to employ UNL to perform the Dry Weather Storm Water Monitoring and UNL hereby agrees to perform said Dry Weather Storm Water Monitoring. Said Dry Weather Storm Water Monitoring is more particularly set forth in those portions of UNL's Proposal dated March 25, 2008 described as "Annual Pollutant Load Estimation for Dry Weather Flows from Storm Drain Discharges: Method Development" attached hereto as Attachment A and incorporated by this reference.

**II.
SCOPE OF SERVICES**

UNL agrees to undertake, perform and complete in an expeditious, satisfactory and professional manner the Annual Pollutant Load Estimation for Dry Weather Flows from Storm Drain Discharges: Method Development services set forth in Attachment A on behalf of the City.

**III.
TERMS OF AGREEMENT**

The term of this Agreement shall commence May 12, 2008 through December 31, 2008, unless extended by agreement of both parties.

**IV.
COMPENSATION**

The City agrees to pay UNL for the services set forth in Attachment "A" a sum not to exceed Seventeen Thousand Eight Hundred Seventy-Three and No/100 Dollars (\$17,873.00). An initial start-up payment in the amount of \$8,936.50 shall be payable within 30 days from the execution of this Agreement by the City. Payment of the remaining \$8,936.50 shall be payable upon completion of the Dry Weather Storm Water Monitoring. All payments will be made to UNL and sent to the Office of Sponsored Programs, 312 North 14th Street, Lincoln, NE 68588-0430.

Failure of the City to accept UNL's Dry Weather Storm Water Monitoring on the basis of differences of professional opinion shall not be the basis for rejection of the work performed by UNL or for nonpayment of UNL.

**V.
SERVICES TO BE CONFIDENTIAL**

The Parties acknowledge that it may be necessary to disclose information to the other Party that is considered proprietary or confidential ("Confidential Information"). If the provider of information considers the information as Confidential Information, it shall be identified as such in writing or marked "Confidential". If orally disclosed to or observed by the recipient, a description of the Confidential Information shall be reduced to writing by the provider, marked "Confidential," and delivered to recipient within thirty (30) days of disclosure.

The recipient of Confidential Information agrees to keep In confidence and not to disclose Confidential Information of the provider to any person outside the recipient's organization or to any unauthorized person within recipients organization and not to use providers Confidential Information for any purpose other than the performance of recipient's obligations under this

Agreement, without the prior written approval of provider. Recipient acknowledges it will treat providers Confidential Information in a manner consistent with recipient's treatment of its own similar Confidential Information. However, the foregoing limitations as to disclosure and use shall not apply to any portion of Confidential Information which:

- (i) was in the possession of recipient before receipt from provider; or
- (ii) is or becomes a matter of public knowledge through no fault of recipient; or
- (iii) Is rightfully received by recipient from a third party without a duty of confidentiality; or
- (iv) is disclosed by provider to a third party without a duty of confidentiality on the third party; or
- (v) is independently developed by recipient and shown by documentation; or
- (vi) is disclosed publicly under operation of law.

Each party retains the right to refuse to accept any Confidential Information which is not considered to be essential to the completion of the Research.

Recipient shall not disclose or otherwise use Confidential Information disclosed under this Agreement for a period of five (5) years from the date of expiration or termination of this Agreement.

Upon request of provider, recipient shall return or destroy all Confidential Information. However, recipient may retain one (1) copy for archival purposes and to confirm compliance with this Agreement.

VI. TERMINATION OF AGREEMENT

Both parties may terminate this Agreement, in whole or part, for any reason for their own convenience upon at least ten days written notice.

If the Agreement is terminated by the City, UNL shall be paid for all services performed, non-cancellable obligations and reimbursable expenses incurred, not to exceed the above-mentioned Agreement amounts, up until the date of termination.

UNL hereby expressly waives any and all claims for damages or compensation arising under this Agreement except as set forth in this paragraph in the event of termination.

In the event of such termination, UNL agrees that all work performed and all confidential information as described in Section V provided by UNL to the City or by the City to UNL shall remain confidential and shall not be provided to any person, firm, association or corporation without the consent of the City.

**VII.
EQUAL EMPLOYMENT AND FAIR LABOR PRACTICES**

In connection with the performance of work under this Agreement, UNL agrees that it shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, national origin, age or marital status. In the employment of persons, UNL shall fully comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code and shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, national origin, age or marital status. UNL shall maintain fair labor standards in the performance of this Agreement as required by Chapter 73, Nebraska Reissue Revised Statutes of 1943 (as amended).

**VIII.
INTEREST OF UNL**

UNL covenants that UNL presently has no interest, including but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of the Dry Weather Storm Water Monitoring required to be performed under this Agreement. UNL further covenants that in the performance of this Agreement, no person having any such interest shall be employed or retained by UNL under this Agreement.

**IX.
INDEMNIFICATION**

Each party shall be responsible for its negligent acts and omissions and the negligent acts or omissions of its employees, officers, or directors to the extent allowed by law.

**X.
AUDIT PROVISION**

UNL shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

**XI.
INDEPENDENT CONTRACTOR**

The City is interested only in the results produced by this Agreement. UNL has sole and exclusive charge and control of the manner and means of performance. UNL shall perform as an independent contractor and it is expressly understood and agreed that UNL is not an employee of the City and is not entitled to any benefits to which City employees are entitled, including, but not limited to, overtime, retirement benefits, workmen's compensation benefits, sick leave or and injury leave.

**XII.
NEBRASKA LAW**

This Agreement shall be construed and interpreted according to the laws of the State of Nebraska.

**XIII.
INTEGRATION**

This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement.

**XIV.
AMENDMENT**

This Agreement may be amended or modified only in writing signed by both the City and UNL.

**XV.
CAPACITY**

The undersigned person representing UNL does hereby agree and represent that he or she is legally capable to sign this Agreement and to lawfully bind UNL to this Agreement.

**XVI.
SEVERABILITY**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**XVII.
WAIVER OF CONTRACTUAL RIGHT**

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

**XVIII.
REPRESENTATIONS**

Each party hereby certifies, represents and warrants to the other party that the execution of this Agreement is duly authorized and constitutes a legal, valid and binding obligation of said party.

IN WITNESS WHEREOF, UNL and the City do hereby execute this Agreement.

CITY OF LINCOLN, NEBRASKA

Attest:

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

**BOARD OF REGENTS
UNIVERSITY OF NEBRASKA-Lincoln**

By: _____
Jeanne Wicks
Director, Office of Sponsored Programs

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, on behalf of the City of Lincoln, Nebraska.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Jeanne Wicks, Director, Office of Sponsored Programs.

Notary Public

**A Proposal for:
Annual Pollutant Load Estimation for Dry Weather Flows from Storm Drain
Discharges: Method Development**

Overview

The proposed work concerns dry weather storm drain discharge characterization. The monitoring of dry weather flows from storm drains is to provide a field screening analysis for illicit connections and illegal dumping for either selected field screening points, and major storm drain outfalls. Approximately 20% of the storm drain field sampling stations will be monitored during this period covered by this project. In addition, a simple method will be developed to estimate the contribution of dry weather flows to the total pollutant load for the city for several water quality parameters (Total Suspended Solids, E. Coli, and total Phosphorus).

This project will consist of four phases as discussed below. Note that the same tasks for phases I, II, and III will be performed separately for the summers for 2008 and 2009.

Phase I. Visit Field Sampling Sites, Collect Samples and Record Observations.

1. UNL Civil Engineering will have a team of at least two students visit approximately 55 field sampling sites during the summer of 2008 and approximately 55 field sampling sites during the summer of 2009. Each site will be visited at least three days after a measurable rainfall. The field sites to be visited are listed in the "Dry-Weather Stormwater Monitoring for Summer 2007". No more than 10 additional sites will be added to the list for each summer's monitoring, reflecting new outfall sites in newly developed portions of Lincoln and site to be re-sampled from the previous years.
2. UNL Civil Engineering will develop a list of the top 50 residential sites that represent the lowest risk based on Gina Rust's thesis work (e.g., low potential for flow to be observed) to remove from the five year monitoring rotation. Up to 50 sites in the five year monitoring rotation will be replaced by sites identified by the City of Lincoln. These will be commercial and industrial sites that represent a higher risk of illicit discharge.
3. UNL Civil Engineering will provide new information found concerning the storm drain outfalls during sample collection to the City.
4. UNL Civil Engineering will report the following concerning each site:
 - time, day, and weather during site visit, and
 - a narrative description of site appearance (e.g., if it appears that dry weather flows may have occurred).
5. If there is flowing water at a field site, UNL Civil Engineering will
 - collect two grab samples of water during a 24 hour period, with a minimum of 4 hours between samples.
 - prepare a narrative description of the water for the color, odor, turbidity, presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping, and
 - a description of the flow rate.

A Proposal for:
Annual Pollutant Load Estimation for Dry Weather Flows from Storm Drain Discharges: Method Development

Overview

The proposed work concerns dry weather storm drain discharge characterization. The monitoring of dry weather flows from storm drains is to provide a field screening analysis for illicit connections and illegal dumping for either selected field screening points, and major storm drain outfalls. Approximately 20% of the storm drain field sampling stations will be monitored during this period covered by this project. In addition, a simple method will be developed to estimate the contribution of dry weather flows to the total pollutant load for the city for several water quality parameters (Total Suspended Solids, E. Coli, and total Phosphorus).

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 - prepare a narrative description of the water for the color, odor, turbidity, presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-storm water discharges or illegal dumping, and
 - a description of the flow rate.

- if hazardous materials are discovered the Lincoln Fire Department Hazardous Spills Response Unit should be notified immediately. Illicit discharges or illegal dumping need to be reported immediately to the City of Lincoln and Lancaster County Health Department (LLCHD).
- significantly above normal pollutant data or pollutant data where an illicit discharge may be suspected will also be reported immediately to the City of Lincoln and LLCHD.

Phase II. Analyze Samples and Perform Quality Control Analyses.

6. The analyses listed in Table 2 will be performed by University of Nebraska-Lincoln on water samples collected from each field site with flowing water. The total phosphorus may be performed by the UNL Water Sciences Laboratory. E. Coli and total copper analysis may be performed by the Nebraska Department of Health and Human Services System Public Health lab.

Table 2. Summary of Laboratory Analyses

Procedure	Method	Max. Sample Hold Time
Temperature	thermometer	On-site testing
Flow Measurement		On-site testing
pH	Probe	4 hours
Chlorine	Hach 8167 (Std. Methods 4500)	On-site testing
Chloride	Hach 8113	7 days
Total Copper	Std. Methods 3030 with Atomic Absorption	3 months
Detergents / Surfactants	Hach 8028	24 hours
Fluoride	Hach 8029 (US EPA 340.1)	7 days
Nitrate	Hach	7 days
COD	Standard Method 5220	7 days
Total Phosphorus	Standard Method 4500-P	24 hrs
E. Coli	Colilert-QT (quanti-tray method)	8 hrs
Total Suspended Solids	Standard Method 2540	7 days
Turbidity	Standard Method 2130	4 hours

7. Turbidity tests will be performed on all dry weather samples. Total Suspended Solids tests will be performed on all water samples that visually are turbidity and one-third of the rest of the “clear” samples.
8. UNL Civil Engineering (CIVE) will test half the samples in duplicate (over the course of the summer) to estimate the “relative percentage error” for each analysis performed by UNL CIVE.
9. UNL Civil Engineering will test at least 7 blank samples (over the course of the summer) for each analysis performed by UNL CIVE.

10. UNL Civil Engineering will determine the Minimum Detection Limit [MDL] (following Standard Methods for Water and Wastewater Analysis) at the start of the summer for each analysis performed by UNL CIVE.
11. UNL Civil Engineering will test at least 8 standard samples with known concentrations (over the course of the summer) for each analysis performed by UNL CIVE. A new MDL will be determined using this data.

Phase III. Prepare Final Report.

12. UNL Civil Engineering will prepare a final report summarizing the field notes and water sample analysis data collected in the first three Phases. The final report will include several pages of discussion of the data and engineering suggestions. The final report will include tables that make it easy to compare the 2007 results to those found in previous studies. Computer disks will be attached to the final report containing excel spreadsheets of data. Reports will be presented to the City of Lincoln staff by November 2008 and November 2009 summarizing each summer's dry weather monitoring.

Phase IV. Estimation of Dry Weather Flow Contribution to Annual Pollutant Loading.

13. All dry weather flows will be monitored and sampled for E. Coli, Total P, COD, and Turbidity/TSS. Estimates for the total pollutant mass in the dry weather flows will be made based on the observed flows and reported concentrations. These mass loadings will be then normalized upwards based on the data of Rust (2007) to represent the entire city of Lincoln. These mass loadings will then be compared to the total pollutant mass loadings estimated by Vegi (2008) for the City of Lincoln's wet weather loadings.
14. The results of the annual load estimation will be included in the dry weather monitoring report submitted by November of 2009.

Budget Details:

All equipment and supplies purchased for this project remain the property of UNL at the end of this project. This contract will be paid via invoices submitted to the City of Lincoln no more frequently than monthly. This contract will be initiated as soon as possible after 1) appropriate approval by both UNL and the City of Lincoln, and 2) a qualified UNL student is recruited to carry out the work as specified above. The work will be carried out during the period between the approval date and November 30, 2009.

Budget

	Grant Funds Requested Year 1: 5/12/08- 12/31/08	Grant Funds Requested Year 2: 1/1/09- 1/30/09
Personnel		
Faculty (Dvorak) 0.8 mo.	\$4,100	\$4,200
Grad Research Assistant (1 mo.)		\$1,450
Undergraduate Students (1250 hrs @\$10/hr)	\$6,250	\$6,250
GRA Health Insurance		\$100
Fringe Benefits @ 28% on all but undergraduate stipends (no fringe)/GRA @32%	\$1,148	\$1,640
Total Personnel Costs	\$11,498	\$13,640
Operating Expenses		
Operating (phone, copies, etc.)	\$100	\$100
Materials & Supplies, Equipment Maintenance	\$1,500	\$1,600
Lab Testing Fees	\$2,650	\$2,750
Travel (vehicle rental)	\$500	\$500
Total Direct Costs	\$16,248	\$18,590
Indirect Costs @10%	\$1,625	\$1,859
Total Costs	\$17,873	\$20,449